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CO-ORDINATION OF WORK

Assistance by multilateral organizations and bilateral aid agencies in the modernization of commercial laws in developing countries

Note by the Secretariat

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INTRODUCTION

1. The General Assembly, in resolution 34/142 of 17 December 1979, requested the Secretary-General to place before the United Nations Commission on International Trade Law, at each of its sessions, a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of co-ordinating the activities of other organizations in the field.

2. In response to that resolution, detailed reports on the current activities of other organizations related to the harmonization and unification of international trade law have been issued at regular intervals, the last one having been submitted at the twenty-third session in 1990 (A/CN.9/336). At the twenty-fourth session it was reported that the Secretariat was engaged in an exercise designed to determine the extent to which multilateral organizations and bilateral aid agencies were involved in activities whose objective was that of modernizing commercial law in developing countries (A/CN.9/352).

3. The development of international trade law is usually thought of in terms of the preparation of legal texts governing some aspects of the law of international trade by international organizations such as those whose activities have been the subject of prior reports. However, the international community may also affect the development of international trade law when it contributes to the development of domestic commercial law by, for instance, providing financial and technical assistance for the enactment of legislation to govern certain areas of commercial law. It was the understanding of the Secretariat that various multilateral organizations and bilateral aid agencies had from time to time assisted developing countries to prepare legislation in various aspects of commercial law including such matters as maritime law, commercial arbitration, and intellectual property. It was further the understanding of the Secretariat that projects of that nature had been undertaken at the request of both individual governments and groups of governments. It was thought that it would be of great value to all concerned to have a global picture of those activities. In particular, information was desired on the extent to which texts of uniform law prepared at the international level formed the basis for the legal texts prepared under the auspices of multilateral organizations and bilateral aid agencies.

4. Prior to and in preparation for the report on current activities of international organizations related to the harmonization and unification of international trade law to the twenty-fourth session of the Commission (1991) (A/CN.9/352), the Secretariat requested information from selected multilateral organizations and bilateral aid agencies on projects that they might have financed in the last five years or for which they might have given technical assistance for the modernization of the law governing an aspect of economic activity.

5. The details requested of each project included: (1) the identity of the country in which the project was undertaken or, if undertaken for a region or regional organization, the region, organization and countries directly affected; (2) date when the project was commenced and, if completed, date of completion; (3) subject area covered by the project and type of legal text elaborated; (4) nature and extent of expertise furnished in the execution of

the project; (5) whether a uniform or model legal text adopted at the international level on part or all of the subject matter of the project was (i) incorporated in whole into the project text, or (ii) used as the basis for the project text, or (iii) not used at all in the project text; and (6) whether the law of a particular State, other than the State where the project was undertaken, was incorporated in whole or in part into the project text, or used as the basis for the project text, and the nature of the changes made if any. The organizations were further requested to supply the Secretariat with the legal text where one had been enacted.

6. It was reported to the twenty-fourth session of the Commission that, while a number of multilateral organizations and bilateral aid agencies that had been solicited for information replied to the Secretariat, the information received was inconclusive on the extent to which multilateral organizations and bilateral aid agencies were involved in activities whose objective was that of modernizing commercial law in developing countries (A/CN.9/352 para. 5). After the twenty-fourth session the Secretariat tried again to collect the same kind of information. However, this time the Secretariat wrote to all Resident Representatives of the United Nations Development Programme (UNDP) asking them whether they had information about any projects for revision of laws governing economic activities, including trade and investment, undertaken in recent years with the financial or technical assistance of outside agencies, in their respective countries.

I. AREAS IN WHICH ASSISTANCE HAS BEEN GIVEN BY MULTILATERAL ORGANIZATIONS AND BILATERAL AID AGENCIES

7. An review of the information contained in the replies reveals that some multilateral organizations and bilateral aid agencies are involved in rendering assistance in activities whose objective is that of modernizing commercial law in developing countries. The assistance rendered typically takes the form of the provision of experts, as well as funding to be used in the execution of projects. These activities concentrate on the modernization and development of legislation in the following four areas:

1. investment laws
2. intellectual property law
3. maritime legislation
4. laws and regulations in other areas

1. Investment laws

8. Work in relation to investment laws is being carried out by the United Nations Centre for Transnational Corporations (CTC), the International Bank for Reconstruction and Development (World Bank) and to a lesser extent the United Nations Industrial Development Organization (UNIDO) and UNDP. The thrust of the work typically encompasses the development of investment codes that are designed to create a legal framework favourable to domestic and foreign investment. The investment codes deal with such matters as: the provision of the mechanisms for the establishment of investment centres to be charged with the implementation of investment laws, in particular with the responsibility for the promotion, co-ordination, regulation and monitoring of

local and foreign investments in a given country; the investment procedures to be followed by investors in establishing their enterprises in the country; and the provision of incentives and guarantees to be provided to investors in order to encourage them to invest.

2. Intellectual property law

9. Work in the area of intellectual property law reported to the Secretariat covers patents, industrial designs, copyright and trade marks. Work in this area is carried out primarily by the World Intellectual Property Organization (WIPO), with some work also being done by the United Nations Educational and Scientific Organization (UNESCO). WIPO co-operates, on request, with individual governments, or groups of governments, of developing countries in their efforts to adopt new national laws and regulations or new regional treaties or to improve their existing laws and regulations in the field of intellectual property. The co-operation takes various forms, in particular, the preparation of model provisions, model laws, principles and guidelines which are designed to serve as the basis for the enactment of national legislation or regional treaties.

10. Other projects of WIPO concern the creation of general awareness of the usefulness and importance of intellectual property in the process of development, the promotion of acquisition of technology in developing countries, and the facilitation of the securing by developing countries of legal protection in other countries for their own inventions and other creative works. Still other projects of WIPO involve giving advice in consultations between members of staff of the International Bureau of WIPO or consultants engaged by the International Bureau, on the one hand, and officials of the governments concerned, on the other hand. The International Bureau of WIPO also assists, on request, governments of developing countries in designing and implementing medium-term plans and projects on the development of intellectual property law in order to build up, strengthen and improve the effectiveness of intellectual property laws of those countries in the protection of intellectual property rights.

3. Maritime legislation

11. Work on maritime legislation is being carried out by the United Nations Conference on Trade and Development (UNCTAD) and often with financial assistance from UNDP to the countries in which the projects are being carried out. The work involves the development of modern maritime codes for the countries involved. In one such project a country was assisted in drafting a merchant shipping act and in another in drafting regulations pertaining to certification of seafarers and other inland waters navigation. In the three countries reported to the Secretariat as places where such work is being carried out the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) was used as a model on the basis of which the new legislation was drafted. The Secretariat is, however, aware of other cases not reported to it, where similar work is being carried out and the International Convention for the Unification of Certain Rules relating to Bills of Lading (The Hague Rules, 1924) is being used.

4. Laws and regulations in other areas

12. Work being carried out in connection with commercial laws includes the elaboration of legislation in fields such as taxation, insurance, customs, procurement and export and import trade. This work is usually carried out in the context of the general modernization of the commercial sector of a given country with a view to facilitating economic growth and supporting an increased level of private transactions and investments. A project in one country for instance involved the elaboration of a procurement law to govern public sector procurement. In another country a project involved the development of general and special contract conditions to be included in industrial subcontracting agreements, and in yet another country a project involved the modernization and streamlining of the law governing the issuing of trading licenses to those wishing to set up business enterprises. In an additional country, a project involved the modernization of a country's insurance law. In the projects reported to the Secretariat the work is being undertaken mostly with the assistance of UNDP, the World Bank and the United States International Development Co-operation Agency (USAID).

II. RECOMMENDATIONS

13. The activities of multilateral organizations and bilateral aid agencies can play a significant role in the development of international trade law. Moreover, their activities in assisting developing countries to prepare legislation in various areas of commercial law have implications for the harmonization of international trade law. In view of this the Commission may wish to request the Secretariat to continue to monitor the work of these organizations in their work of assisting developing countries in preparing legislation in various aspects of commercial law and to report developments in this area to the Commission at a later date.

14. Furthermore, in view of the importance of the adequacy of the legal framework to the economic development of developing countries and of countries that are moving from a centrally planned to a market economy, the Commission may wish to consider recommending to those multilateral organizations and bilateral aid agencies that are thus far not involved in work concerning the modernization of commercial law that they consider taking a more active part in such activities and to consider including such activities in the terms of reference of their work.

15. The Commission may in addition wish to urge that there should be greater co-operation and consultation between UNCITRAL and the multilateral organizations and bilateral aid agencies when those organizations carry out projects designed to modernize commercial law in developing countries. Such co-operation could include the exchange of information on possible model texts to be used as a basis for the drafting of legislation in such projects and consultation on the appointment of experts to be recruited to work on such projects.